

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FERNANDO FONTANEZ, Plaintiff,)	
)	Case No. 07 C 6391
)	
v.)	JUDGE HART
)	
OFFICER JOHN DABE,)	MAGISTRATE ASHMAN
Defendant.)	

**DEFENDANTS' ANSWER, 12(b)(6) DEFENSES, AFFIRMATIVE DEFENSES AND
JURY DEMAND TO PLAINTIFF'S AMENDED COMPLAINT**

NOW COMES, Defendant Chicago Police Officer John Dabe, by and through his attorney, Joel Sandoval, Assistant Corporation Counsel for the City of Chicago, and respectfully submits the following answers to plaintiff's complaint.

JURISDICTION

1. Now comes Plaintiff "Fernando Fontanez" Citing cause of action false arrest in violation of USC 1983 Title 42 and Title 36 and the Fourth and Fourteenth Amendments of the Constitution of the United States of America in that;

ANSWER: Defendant admits Plaintiff purports to state a claim for false arrest and for violations of his constitutional rights pursuant to 42 U.S.C. § 1983, but denies the remaining allegations in this paragraph.

FACTS

2. On June 7th, 2006 the above defendant arrested me without cause...

ANSWER: Defendant admits he arrested Plaintiff on June 7th, 2006 but denies he made this arrest without probable cause.

3. ...and caused me undue emotional and psychological distress by claiming that I wrote threatening letters to public officials including “Vice President Richard B. Cheney” and “Governor Rod Blagojevich” knowing this to be patently false...

ANSWER: Defendant denies the allegations in paragraph 3 of Plaintiff's complaint.

4. ...and causing me to be arrested and listed as a government threat within the Chicago Police Department rap sheet and Federal and State rap sheets ETC.

ANSWER: Defendant admits he arrested plaintiff but denies the remaining allegations in paragraph 4 of Plaintiff's complaint.

5. Plaintiff seeks immediate restorative clearance of name within law enforcement and compensatory and punitive damages to be determined by a jury so help me god!

ANSWER: Defendant denies the allegations in paragraph 5 of Plaintiff's complaint.

WHEREFORE, Defendant request judgment in his favor and against plaintiff on all counts and claims in the complaint, dismissal of this cause with prejudice and costs and such other relief this court deems appropriate.

Fed. R. Civ. P. 12(b)(6) DEFENSES

1. Plaintiff has failed to allege facts sufficient to support a claim under 42 U.S.C. § 1983, for violations of his constitutional rights as a matter of law against Defendant.

2. An award to punitive damages would deprive Defendant of due process of law in violation of the fifth and Fourteenth Amendments to the United States Constitution where:

(a) liability for punitive damages has not been proven beyond a reasonable doubt, or at least by clear and convincing evidence;

(b) the award of punitive damages is disproportionate to actual damages.

AFFIRMATIVE DEFENSES

1. Defendant, John Dabe, is a government official, namely a police officer, who performs discretionary functions. At all times material to the event alleged in the Complaint, a reasonable police officer objectively viewing the facts and circumstance that confronted Defendant could have believed his actions to be lawful, in light of established law and the information the Defendant possessed. Therefore, Defendant John Dabe is entitled to qualified immunity on Plaintiff's 42 U.S.C. § 1983 claims.

2. Where Individual Defendant may be liable in damages, the amount of damages to which Plaintiff would otherwise be entitled must be reduced by application of principles of comparative fault, in proportion to the amount of the intentional, willful and wanton or negligent conduct of the Plaintiff which was the proximate cause of his injuries or damages.

3. To the extent Plaintiff failed to mitigate any of his claimed injuries or damages, any verdict or judgment obtained by Plaintiff must be reduced by application of the principle that Plaintiff has a duty to mitigate his claimed injuries and damages, commensurate with the degree of failure to mitigate attributed to Plaintiff by the jury in this case.

JURY DEMAND

Defendant requests a trial by jury.

WHEREFORE, Defendant request judgement in his favor and against Plaintiff on all counts and claims in the complaint, dismissal of this cause with prejudice and costs and such other relief this court deems appropriate.

Respectfully submitted,

/s/ Joel G. Sandoval
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